IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4064 of 1990

with

SPECIAL CIVIL APPLICATION No 6871 to 6876 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURAT MUNICIPAL CORPORATION

Versus

HARIBEN VIRUBEN

Appearance:

1. Special Civil Application No. 4064 of 1990
   MR PRASHANT G DESAI for Petitioner No. 1
   NOTICE SERVED for Petitioner No. 1
   MR BN RAVAL for Respondent No. 1
2. Special Civil Application No. 6871 to 6878 of 1991
   MR PRASHANT G DESAI for Petitioner No. 1
   MR RD RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 06/09/2004

COMMON ORAL JUDGEMENT

Heard Mr.Kaushal Pandya, learned advocate for Mr.P.G.Desai on behalf of petitioner - Surat Municipal Corporation and Mr.R.D.Rawal, learned advocate for respondents.

.RS 2

#. In this group of petitions, the petitioner Corporation has challenged the order passed in recovery application by the labour court, Surat in various recovery applications dated 10th November, 1989. The labour court has granted service benefits of Rs.5000/- to each respondent with cost of Rs.251/-. Initially, this Court has issued Rule on 11th June, 1991 and by way of ad-interim order, operation of the order in question has been stayed. Thereafter, on 25th September, 1991, the Division Bench of this Court [Coram : R.A.Mehta and N.J.Pandya, JJ] has passed the following order;

"The petitioners have prayed for interim relief of staying the operation oft he order of the Labour Court whereby each workman has been awarded a sum of Rs.5,000/- and costs of Rs.251/-. Having regard to the smallness of amounts in respect of each workman and having regard to the fact that this is money award, interim relief is confirmed on condition that the petitioners deposit the entire amount in the Labour Court within four weeks from today. On such deposit, the concerned workman would be entitled to withdraw the same on furnishing an undertaking to the Labour Court that in the event of High Court directing them to repay the amount, they shall do so within six months of such direction. Interim relief is made absolute accordingly."

#. The recovery applications were filed by the respondent under Section 33[c][2] of the I.D.Act, 1947 claiming Rs.5,000/- being service benefits from the petitioner Corporation. All the recovery applications were consolidated vide Exh.9 by the labour court. The facts of the case are that all the respondents workmen were working in Construction Department for more than 20 years as daily wager and eight years as permanent employee of the corporation. As such, no benefit was paid by the corporation for 20 years as daily wager and

therefore, they claimed benefits on the basis of the award passed by the Tribunal in Reference No.161 / 1970. According to the calculation based on the award, the workmen are entitled to Rs.5,000/- for twenty years service from the corporation. The claim of the workman was objected and disputed by the petitioner before the labour court. According to the Corporation, whatever due amount, the same was paid to the workmen and nothing remains to be paid to the workman by the petitioner. Before the Labour Court, Hariben Viruben, Jiviben Bhaniben, Prem Uma, Manju Gauri, Ratan Mithi, Aluben Sonaben were examined before the labour court vide Exh.7 & 8. On behalf of the petitioner, one Sabbir Yusufbhai Bapra was examined at Exh.12. The respondent workmen had produced copy of the notice sent to the petitioner, so also, the letters which were sent to the petitioner. Copy of the termination order were also produced before the labour court. Thereafter, both the parties had closed their evidence and framed the issues to the effect that Whether the workmen are entitled to service benefits in terms of money to the tune of Rs.5000/- as per the award passed by the Industrial Tribunal in Reference No.161 / 70, or not. This aspect has been examined by the labour court on the basis of the oral and documentary evidence. These all respondent workmen were working initially as daily wager for about twenty years and thereafter, they made permanent. Service benefits were paid by the Corporation to the workmen about service rendered by them as permanent employee but no payments were made by the corporation for service rendered by the workmen as the daily wager. It is pertinent to note that these facts are not in dispute before the labour court by the petitioner. These facts were deposed by the workmen in their oral evidence and therefore, the labour court has thought it fit that for twenty years as daily wager the workmen are entitled to service benefit of Rs.5,000/- as per the award referred to above. Thereafter, the labour court has granted service benefits.

#. Learned advocate Mr.Kaushal Pandya has submitted that workmen are not entitled to said benefits. Whatever, legal due amounts were paid by the Corporation and no due remains to be paid to the workman. Therefore, the labour court has committed gross error in granting the said amount to the workmen.

#. I have considered submissions made by the learned advocates for the parties. It is not in dispute between the parties that initially, all the workmen were appointed or engaged as daily wager. They remained as daily wager for about twenty years. Thereafter, they

become permanent Beldar. The respondent workmen had completed more than eight years service as permanent Beldar. Therefore, the Corporation has paid service benefits to the respondent workmen about service rendered by the workman as permanent employee. It is not case of the corporation that service benefits were paid including daily wage service, meaning thereby, no payments were made about daily wages service rendered by the respondent workmen. Therefore, in view of such undisputed fact before the labour court, the labour court has considered oral and documentary evidence and relied upon the earlier award passed by the Tribunal in Reference No.161 / 1970 and granted Rs.5,000/- for the service benefits for completing more than twenty years service as daily wager. This amount has been granted as service benefit for rendering 20 years as daily wager.

#. I have perused the award passed by the labour court and also considered submissions made by the learned advocate Mr.Pandya. Submissions made by the learned advocate Mr.Pandya is apparently not correct but it is contrary to the record and hence, the same is rejected. While passing such award, the labour court has not committed any error and as such, no interference is warranted by this Court while exercising the powers under Article 227 of the Constitution of India. Mr.Pandya is also not able to point out any infirmity in the order impugned in this group of petitions and therefore, according to my opinion, there is no substances in the present petitions.

In the result, petitions of this group are dismissed. Rule is discharged. Interim relief, if any, stands vacated. No order as to costs.

Date : 6.9.2004 [H.K.Rathod, J.]

#kailash, ps#